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File No. O Partnership/50

Legal Deptt

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Subject:—

Opinions under the Indian Partnership Act 1932

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C O N T E N T S.

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2	8239 17-6-50	Sec. 69. Question whether the partner in the unregistered partnership can enforce his right as pertner against Govt.	5 - 6.
3	12217 26-8-50	Sec. 18,19(1) and 20. Question whether a ~~fxixx~~ firm of two partners is correct in saying that the payments made to the partner, ~~how~~ was not authorised accordingly to the partnership agreement to receive any payments are not legal payments.	7 - 8.

Office of the R.L.A.

Indian Partnership Act, 1932 (IX of 1932) Sections 4, 41 and 69.

"Partnership" as defined in section 4 of the Indian Partnership Act, 1932 (IX of 1932 is the relation between persons who have agreed to share the profits of a business carried on by all or each of them acting for all: Persons who have entered in to parternership with one another are called "individually partners" and collectively "a firm" and the name under which their business is carried on is called the "firm name": As common interest will not make a partnership without division of profits so also sharing of profits will not make partnership unless there is really a a common business. The true test of partnership is not whether a man receives a share of profits; it is whether the business is being carried on by him or by another on his account so that he is the principal. Whether the relation of partnership does or does not exist must depend on thereal intention of contract of the parties as shown by all the facts. It is settled or highly probable that certain kinds of facts are not alone sufficient to constitute partnership. The question how much must be added to produce that result is not capable of any general answer save that modern courts may be expected on the whole to treat men as partners when and so far as a sensible man of business would consider them so. (See Mulla's Partnership Act' pp. 12-14). Applying these tests to the facts of the present case it appears from the documents

on record that Mr. Mohanbhai Davaji Khoja was a finincing partner and all the capital assets of the firm belong to him while Mr. Dave was entrusted with the management of the firm and was drawing a working partner with eight anna share in the profits alone. There is also the fact that Mr. Dave was entrusted with the management of the firm and was drawing all the while money from the firm not by way of remuneration but as one who could presumably be a partner. There are also certain letters from Mr. Mohanbhai to the the effect that Mr. Dave was treated by him as a partner. It appears therefore, clear that Mr. Dave could be treated as a partner of the firm with a right to eight anna share in the profits alone. Obviously, therefore, Mr. Dave can have no right to the capital assets of the firm.

2. It is ture that the firm has not been registted either before or after the integration of even subsequent to the merger of the Palanpur State in the Bombay State. The effect of non-registration as stated in section 69 of the Indian Partnership Act, is that no member of an unregistered firm can enforce his rights under the Partnership contract against either the firm or any present or past member of it; neither can the firm sue its customers on their contracts; but the firm remains liable to be sued by persons outside it and suits for the dissolution of the firm are tenable. It is, therefore, clear that Mr. Dave's right to sue for the dissolution of the firm remains unaffected even though the firm has not been registered. Under section 41 a firm is dissolved by the happening of any event which makes it unlawful for the business of the firm to be carried on or for the partners to carry it on in partnership. In view of the order of the Deputy Custodian the property of the firm vests in the

vests in the Custodian. Consequently, it would not be lawful for the partners to carry on the business of the firm. The firm would, therefore, stand dissolved. In the circumstances it would be necessary to take the accounts of the firm and to determine the claim of Mr. Dave on account of his share in the profits. The question whether and in what manner sufficient security should be taken before the amount thus settled is given to Mr. Dave may be considered after the accounts are settled.

o/c Sd/-(P.M.L.)
10/3

Remembrancer of Legal Affairs.

U.R. to Rehabilitation Department, No. 3401 , dated the 11th March 1950.

C.G.R. 26-6

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Indian Partnership Act, 1932. Sect. 69.

Since the partnership was not registered, Shri. Padhye can have no right against Government to enforce his right as partner (See sect. 69 of the Indian Partnership Act, 1932).

O.C. Sd/- (P.M.L.)
Remembrancer of Legal Affairs.

U.R. to A.& F.D. No. 8289, dated the 17th June 1950.

C.G.R. 26-6

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Indian Partnership Act, 1932.

Secs 18, 19(1) & 20

A partner is in law the agent of the firm for the purposes of the business of the firm and has implied authority to carry on in the usual way business of the kind carried on by the firm. (See sections 18 and 19(1) of the Indian Partnership Act, 1932). But it is open to the partners by contract to restrict theimplied authority of any a partner and such restriction will bind thepersons with whom he is dealing only if those persons are aware of the restriction (see section 20).

2. In thepresent case, the Ex. Engineer xxxx seems to have been aware of the fact that the bills were payable to the second partner and that he alone could operate the accounts of the firm. In spite of this payments were made to the first partner. But since a stamped acknowledgement of payment has been obtained from both the partners, the second partner cannot now turn round and say that the payments made to the first partner were not payments to th the firm. Government's position is, therefore, xkff sufficiently safeguarded. Further, since by thepower of attorney executed on 24-9-49 the position has been reversed, the Ex. Engineer should be careful to make payments only to the first partner. No further safeguards appear necessary.

o/c Sd/- (P.M.L.)
28/8

Remembrancer of Legal Affairs.

U.R. to L. & H.D. No. 12217 , dated the 26th August 1950
C.G.R. 26-6